

**REMARKS**

**Summary of Amendment**

Claims 20-25, 28-34, 36-40, 42-45, 49-54, 56-59, 61-65, 67, 68, 70-71, 73-80, and 83-93 are currently pending. The Assignee amends claims 20-21, 28-29, 32, 36, 42, 49-51, 56, 61, 67, 73, 79-80, 85, and 88. The Assignee's amendment also adds new claims 94-114 and cancels claims 22-25, 33-34, 38-40, 45, 52-54, 58-59, 62-64, 70-71, and 74. No new subject matter has been added to the claims.

**Double Patenting**

Claims 20, 28, 36, 42, 49, 56, 61, 67, and 70 are rejected under the judicially created doctrine of obviousness-type double patenting over claims 1 and 8 of U.S. Pat. No. 6,317,718 ("the '718 patent"). The amendment herein amends each of claims 20, 28, 36, 42, 49, 56, 61, and 67 to include a feature related to identifying, in response to the query, multiple retailers proximate to the user and determining, in response to the query, whether the item of merchandise that the user desires to purchase is available for purchase from at least one of the multiple retailers. The amendment herein also cancels claim 70. In view of the amendment to these claims, Applicant respectfully submits that claims 20, 28, 36, 42, 49, 56, 61, and 67, are patentably distinct from claims 1 and 8 of the '718 patent. Accordingly, Assignee respectfully requests removal of the double patenting rejection.

In the alternative, and as the Examiner has not yet identified allowable claims in the present application, the Assignee respectfully requests that the Examiner hold the double patenting rejection in abeyance until allowable claims in the present application have been identified and compared with claims 1 and 8 of the '718 patent.

**35 U.S.C. § 103**

Claims 20, 24-25, 28, 32-34, 36, 38-40, 42, 49, 53-54, 56-59, 61-65, 67-68, 70-71, 73-80, and 82-93 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Hollenberg (U.S. Pat. No. 6,091,956), in view of Fusz et al. (U.S. Pub. No. 2007/0078728). Claims 21-23, 29-31, 43-45, and 50-52 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Hollenberg, in view of Fusz, further in view of Swartz (U.S. Pub. No. 2002/0050526).

Independent claims 20, 28, 36, 42, 49, 56, 61, and 67, include features related to, *inter alia*, identifying an item of merchandise that a user desires to purchase based on a query.

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Independent claim 70 is cancelled. The Assignee amends independent claim 20 to include identifying, in response to the query, multiple retailers proximate to the user and determining, in response to the query, whether the item of merchandise that the user desires to purchase is available for purchase from at least one of the multiple retailers. Claim 20 is further amended to include conditional features based on whether an item of merchandise is available for purchase from at least one of the multiple retailers proximate to the user. If the item of merchandise is available from at least one of the multiple retailers, a best local price is identified and displayed. If the item of merchandise is not available from at least one of the multiple retailers, a closest retailer is identified and the general type of merchandise available from the closest retailer is displayed. Independent claims 28, 36, 42, 49, 56, 61, and 67, are amended in a similar manner. Support for the conditional features may be found in the Specification at least at Paragraph [0288]. The features conditioned on whether an item of merchandise that the user desires to purchase is available from a retailer proximate to the user provide improved and effective customer service.

It would not have been obvious, based on the teachings of Fusz and/or Swartz, to modify Hollenberg to include the claimed features conditioned on whether an item of merchandise that a user desires to purchase is available for purchase from at least one of the multiple retailers proximate to a user. In particular, it would not have been obvious to modify Hollenberg based on either of Fusz or Swartz to include identifying a best local price if the desired item of merchandise is available for purchase from at least one retailer proximate to the user and otherwise identifying a closest retailer and displaying a general type of merchandise available for purchase from the closest retailer if the item of merchandise is not available.

The office action asserts that the combination of Hollenberg and Fusz teach identifying a best local price of an item of merchandise that a user desires to purchase. This combination does not, however, teach or suggest identifying a closest retailer and displaying a general type of merchandise available for purchase from the closest retailer if the item of merchandise the user desires to purchase is not available from the retailers that are proximate to the user. The addition of Swartz does not cure this deficiency. Swartz is relied upon to disclose a shopping list. The Hollenberg-Fusz-Swartz combination does not disclose or suggest the claimed features

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conditioned on whether an item of merchandise that the user desires to purchase is available from a retailer proximate to the user.

This amendment also adds new claims 94-114. New claims 94-101 depend from claims 20, 28, 36, 42, 49, 56, 61, and 67, respectively, and show that the query is based on a current activity the user is engaged in, where the current activity is inferred based on the physical location of the user. Support for this feature may be found in the Specification at least at Paragraph [0292]. New claims 102-111 depend ultimately from claims 20, 28, 36, 42, 49, 56, 61, and 67, and relate to generating a customized product rating report about the item of merchandise that the user desires to purchase by combining prior product ratings generated by other users that have user profiles that are close to the user profile of the user. Support for this feature may be found in the Specification at least at Paragraphs [0194]-[0195].

New independent claim 112 includes the features relating to identifying a best local price and generating a customized product rating report. New claims 113-114 each depend from claim 112. New claim 113 relates to the conditional feature discussed above. New claim 114 relates to inferring the current activity of the user based on the physical location of the user, which is also discussed above.

For the foregoing reasons, the Assignee respectfully submits that amended claims 20, 28, 32, 36, 42, 49, 56-57, 61, 65, 67-68, 73, 75-80, and 82-93, as well as new claims 94-109, are patentable over the combination of Hollenberg and Fusz, and that claims 21, 29-31, 43-44, and 50-51 are patentable over the combination of Hollenberg, Fusz, and Swartz. The Assignee accordingly respectfully requests withdrawal of the § 103 rejection.

### **Conclusion**

Assignee respectfully submits that the asserted combinations do not teach all the features of the amended claims. Assignee therefore respectfully requests withdrawal of the rejections and allowance of the claims. The Examiner is invited to call the undersigned at the telephone number listed below if a telephone conference would expedite allowance of the application.

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Respectfully submitted,

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